

## Appendix 4



Verizon New Hampshire  
900 Elm Street, Suite 1927  
Manchester, NH 03101-2008  
Phone 603 641-1660  
Fax 603 647-0648

**J. Michael Hickey**  
President

March 15, 2002

Thomas B. Getz, Chairman  
Susan S. Geiger, Commissioner  
Nancy Brockway, Commissioner  
New Hampshire Public Utilities Commission  
8 Old Suncook Rd.  
Concord, NH 03301-7319

Re: Verizon New Hampshire Section 271 Inquiry

Mr. Chairman and Commissioners:

Verizon New Hampshire (Verizon NH) is responding to the Commission's letter dated March 1, 2002, setting out the Commission's preliminary analysis concerning Verizon NH's compliance with the fourteen-point competitive checklist of Section 271(c) of the Telecommunications Act of 1996 (the Act), and the accompanying deliberative statement concerning the Verizon NH Performance Assurance Plan (PAP). Verizon NH appreciates the considerable effort that the Commission, the Staff, and Mr. Hartman devoted to the Section 271 inquiry. We have all worked hard to provide the Commission with the information necessary to evaluate Verizon NH's Section 271 application.

We understand the Commission's letter to say that Verizon NH has met the requirements of Checklist Items 3, 6, 7, 8, 9, 10, 12, and 14. We further understand the letter and deliberative statement to express some concerns of the Commission with respect to the application and PAP. We address those concerns below, and express our continued willingness to work with the Commission and Staff to satisfy these concerns.

It is important to continue our mutual efforts to resolve these concerns so that New Hampshire consumers can enjoy the benefits of Verizon's entry into the long distance market as soon as possible. The experience of the other Verizon states in which Verizon provides long distance services shows that consumers directly and immediately benefit from Verizon's high-

value, no-surprises long-distance service offerings, and that once Verizon enters the long-distance market, competitors seek the local market with renewed vigor. As the many New Hampshire business, political, social service, and consumer advocacy leaders at the February 6 Commission meeting stated in no uncertain terms, Section 271 relief is in New Hampshire consumers' best interest.

Before addressing the Commission's letter and PAP deliberative statement, let me note that we respectfully question whether any of the ten conditions that the Commission proposes address actual checklist compliance issues. Indeed, it appears that the proposed conditions mainly address matters that the FCC has addressed and found not to raise issues of 271 compliance, or disputes between parties that should be resolved in other proceedings. Nevertheless, Verizon NH will not contest, and will comply with, conditions 1, 4, 6, 7, 8, and 10, subject to certain understandings or clarifications set forth below. Verizon NH has concerns with the remaining conditions and with that part of the deliberative report suggesting that Verizon NH must modify its Performance Assurance Plan (PAP) in specified ways.

*1. Convert the SGAT to a tariff.* Verizon NH is willing to convert its SGAT to a tariff, and would do so by year end 2002. Verizon NH proposes to incorporate the interconnection, UNE and resale provisions of the SGAT into Tariff No. 84, and will require that amount of time for the significant reorganization and reformatting effort necessary. While that effort is underway, Verizon NH will treat the existing SGAT like a tariff, making it available to all CLECs without the need to enter a specific agreement. Verizon NH will promptly file modifications to its SGAT and tariff to reflect changes in the services and network elements required by the federal Telecommunications Act, as determined by the FCC or the courts.

We wish to point out, however, that creating a wholesale tariff will not eliminate all interconnection agreements (which seems to be an outcome contemplated by the Commission). Carriers may, for various reasons wish to negotiate different terms of interconnection to address particular business issues important to them. While a wholesale tariff may eliminate the need for some agreements, some carriers may continue to request, negotiate, and enter them, as the Telecommunications Act allows.

*2. Reduce UNE rates across the board.* We have serious concerns with the proposed condition requiring an across-the-board reduction in Verizon NH's rates for unbundled network elements (UNEs). Just a few months ago, the Commission concluded its extensive examination of the terms, conditions, and prices upon which Verizon NH offers interconnection and UNEs, DT 97-171. In that proceeding, the Commission Staff and Verizon NH entered a stipulation — which resulted from arms-length negotiations involving compromises by both sides — that set UNE loop rates on the basis of a cost model proposed by the Staff's consultant, Ben Johnson Associates, and switching rates based on Verizon NH's model, with modifications to both models. In addition, various parties presented evidence and argument concerning the extent to

which merger savings should enter the calculation of costs.<sup>1</sup> The appropriateness of the Stipulation, as well as the remaining, non-stipulated rates, terms, and conditions, was fully litigated.

At the conclusion of that proceeding, the Commission issued two lengthy orders, Order No. 23,738, dated July 6, 2001 (the July 6 Order), and Order No. 23,847, dated November 21, 2001 (the Reconsideration Order). In the July 6 Order, the Commission adopted the Staff/Verizon NH stipulation with modifications to a number of the model inputs. The Commission made extensive findings concerning the Stipulation and the remaining rates, terms, and conditions in the SGAT. Specifically, the Commission found that the rates established in the July 6 Order were TELRIC-compliant, and reaffirmed that conclusion in the Reconsideration Order.

The record here does not establish the need or justification for an across-the-board reduction in UNE rates. There is no record evidence to suggest that Verizon NH's UNE rates would not satisfy the benchmarking analysis that the FCC employs as a cross-check to determine whether a state's UNE rates fall within a reasonable range. Moreover, the parties that claim that a "price squeeze" exists failed to account for revenue sources those parties conceded were available to them, such as access and toll revenues. By contrast, Verizon NH's analysis more accurately considered all revenue sources available to a CLEC, and showed considerable margins.

The proposed condition also undermines the Staff/Verizon Stipulation, which the Commission approved with modifications in its July 6 Order. The Stipulation included an overall 10.46% cost of capital, and the agreed-upon capital costs were not challenged in the SGAT proceeding. July 6 Order at 72. Now, just a few months later and without the benefit of a complete record that accompanied the Commission's review of the Stipulation in DT 97-171, the Commission appears to abandon the approved agreement. This undermines the good-faith negotiations of the Staff and Verizon and likely will chill the future willingness of parties to negotiate agreements with the Staff.

If the Commission desires to conduct a fresh examination of UNE rates, it can do so by directing the Company to file new cost analyses and by examining those in a new docket in which all parties are given an opportunity to present their cases. However, since this Commission has already established permanent TELRIC-based rates, there should be no impediment to a satisfactory 271 recommendation even though the Commission may indicate an intention to commence a new cost proceeding. Indeed, this is the approach recently taken by the Rhode Island Public Utilities Commission, which set final TELRIC-based rates in November 2001, directed Verizon to file new cost studies within a set period following 271 relief or no later than May 1, 2002, and recommended FCC approval of the 271 application on the basis of the

---

<sup>1</sup> See, e.g., July 6 Order at 30, 35-36. Verizon NH presented testimony, which was subject to cross-examination, showing that Verizon NH's cost studies in DT 97-171 already reflected cost reductions from merger-related efficiencies and superior buying power. DT 97-171, Tr. of June 10, 1998, at 153-56, 160-62.

rates it had just established. Verizon NH believes that this approach is reasonable, and we request that the Commission consider it as an alternative to this proposed condition.

3. *Revise an unbundled local switching charge.* Similarly, the Commission recently established unbundled local switching charges, based on the Stipulation as modified, in DT 97-171. No party raised the issue concerning the originating and terminating components of intra-switch calls in that proceeding, even though the New York decision, on which the proponents of the revised charge rely, was decided in June 1998, *even before the hearings on switching charges in 97-171*. See DT 01-151 Transcript of Jan. 22, 2002, at 133-34.

This is essentially a cost issue since the Commission-approved costs were calculated on the basis that there are two units of local switching associated with intraoffice calls. A change in the manner of charging such as the Commission proposes does not permit Verizon to recover the total TELRIC-based costs for local switching. Verizon does not believe that it was the Commission's intention to deny it the ability to fully recover the costs that the Commission determined in the TELRIC cost proceeding. This issue can be addressed in the future cost proceeding that Verizon suggests the Commission consider as an alternative to proposed condition No. 2.

4. *New UNE-P combinations.* Verizon NH understands this proposed condition to require Verizon NH to amend its SGAT so as to provide combinations of network elements as specified in the Massachusetts tariff 17, Section 15.1.1B, which reads:

Requests for combinations of local loop and local switch port UNEs that are not ordinarily combined and have not previously been combined in the Telephone Company network will be made available to the extent technically feasible pursuant to the bona fide request process . . . .

Verizon NH will comply with this condition, subject to the following understanding: As the Commission is aware, the network elements that are subject to the unbundling requirement may change from time to time, as the result of FCC or judicial decisions or changes in market circumstances. In addition, the issue whether ILECs are required to provide new combinations currently is before the U.S. Supreme Court. Verizon understands that the Commission's proposed condition to require provision of new UNE-P combinations will cease or will be modified as the result of a Court or FCC decision that new combinations, or any individual UNE that the combination comprises, no longer are subject to the unbundling requirement. Verizon NH requests that the Commission clarify its proposed condition to reflect this understanding.

5. *Intrastate special access.* We have serious concerns that this proposed condition conflicts with several provisions of federal law. First, federal law does not require an ILEC to construct facilities to furnish a UNE. The requirement to unbundle applies only to the network the incumbent LEC already has, not to some superior network that it otherwise would have to build for the requesting CLEC. *Iowa Utilities Board v. FCC*, 120 F.3d 753, 812-13 (8th Circuit 1997), *aff'd in part and rev'd in part*, *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721

(1999).<sup>2</sup> Second, the FCC has repeatedly ruled that Verizon's current policy of providing accelerated access to high-capacity loops through provision of special access circuits, which subsequently can be converted to UNEs, does not raise an issue of compliance with Section 271. *PA Approval Order*, at ¶ 92 (citing *MA Approval Order*, at ¶ 10, *Texas Approval Order*, at ¶ 23).

Finally, allowing a special access circuit to be connected to a UNE, as the Commission seems to allow, potentially conflicts with federal law prohibiting commingling of local exchange and exchange access traffic over such arrangements. The federal prohibition exists irrespective of how the CLEC acquired the UNE (i.e., by obtaining existing facilities or by obtaining special access and converting). The FCC has explained that the prohibition on commingling involved important policy issues:

[P]ermitting the use of combinations of unbundled network elements in lieu of special access services could cause substantial market dislocations and would threaten an important source of funding for universal service. For example, in the absence of completed implementation of access charge reform, allowing the use of combinations of unbundled network elements for special access could undercut universal service by inducing IXCs to abandon switched access for unbundled network element-based special access on an enormous scale.

*Supplemental Order Clarification* in CC Docket No. 96-98, ¶ 7 (issued June 2, 2000). At the hearing, a CLEC witness agreed that this is "a policy issue," and that "the bottom line [is,] what we need to do is lift the [FCC] commingling restriction...." Tr. 12/7/01, at 95-96 (remarks of Ms. Korner-Butler of Network Plus).

A modification of this policy is not a Section 271 checklist compliance issue. Instead, for 271 purposes, the question is whether Verizon NH is following the current policy, which it is. Verizon does not believe that it was the Commission's intention to craft a condition that would potentially violate federal law. If the Commission more precisely identifies its specific concerns, Verizon would be willing to explore potential solutions that are consistent with federal law.

6. *Establish critical-need customer category.* Verizon NH understands the Commission's concerns in this area and will work with the Staff to develop the type of program for critical-need customers that is contemplated by this condition.

7. *Rapid response process.* Verizon NH notes that Section 19.0 of the SGAT contains a dispute resolution mechanism that provides for fast-track arbitration as established in the Commission's order in the *AT&T Arbitrations*, Order No. 22,433 (Dec. 2, 1996), or other reasonable alternative dispute resolution method under the FCC's order approving the Bell Atlantic – GTE merger (FCC Order 00-221, June 16, 2000).

---

<sup>2</sup> Despite this, Verizon NH voluntarily goes beyond its unbundling obligation in certain situations where not all of the necessary facilities are available, but the loop can be activated without the need for additional construction or equipment installation.

Use of these existing, established mechanisms is preferable to creating a new, untested methodology such as the system to be implemented in Maine. We respectfully suggest that the Commission continue to use the existing New Hampshire mechanisms while monitoring Maine's experience with its rapid response process for a reasonable period of time. If, despite this, the Commission determines to implement a rapid response process that is consistent with New Hampshire statutory authority, Verizon would be willing to implement a process like that described in Part B of Appendix A to the Maine Commission's letter dated March 1, 2002.

8. *Convert interim number portability to permanent number portability.* Verizon NH will comply with this proposed condition, subject to obtaining full cooperation from the CLECs that have these arrangements with Verizon NH. Verizon NH has been ready to make these conversions, at CLECs' request, for at least two years now.

Currently there are approximately 120 interim number portability arrangements maintained by two CLECs. Converting these arrangements will require those CLECs to cooperate with Verizon NH in the process. Verizon NH recommends that the Commission Staff contact these CLECs, inform them of the Commission's desire to convert these arrangements, and encourage them to work cooperatively with the Staff and Verizon NH to accomplish that goal.

9. *Recalculate lawfully-established collocation DC power charges.* There is no question concerning Verizon NH's prospective compliance with the Commission's orders establishing the rates, terms, and conditions for collocation DC power.<sup>3</sup> The issue, therefore, is the status of the SGAT rates in effect prior to the Commission's July 6 Order approving the SGAT, and whether such rates were "temporary rates" subject to refund under RSA 378:27 or other applicable provision of law. That issue was raised and discussed in DT 97-171; the Commission specifically found in the July 6 order that "no hearing has been held to set temporary rates for the duration of this docket, as is required by the plain meaning of the language in RSA 378:27." July 6 Order at 159. As the Commission acknowledged in the July 6 Order (*id.*), the Commission has an open docket, DT 00-072, in which it will hear and decide this issue.

The issue of the retroactivity of the DC power rates is an important question involving substantial legal issues. The Commission should hear and decide this issue on a full record to be developed in the docket that it opened to address this very question. Verizon NH believes that the matter can be fully and fairly addressed in that case. If the Commission is, however, concerned about a particular procedural or legal impediment to proceeding in DT 00-072, Verizon is willing to discuss any such concerns with the Commission.

10. *Employee identification.* Verizon's current practice is to provide a last name or other form of identification upon request. Verizon NH, therefore, will comply with this condition.

---

<sup>3</sup> Although Verizon NH has petitioned for an appeal to the New Hampshire Supreme Court of the Commission's decision setting collocation power rates (Order No. 23,915 dated February 4, 2002), we have not sought a stay of the decision pending appeal. Verizon NH will comply with the Commission's order during the course of the appeal.

*Remaining Checklist Items, Including Item 13.* The Commission's March 1 letter explicitly states that Verizon NH complies with Checklist Items 3, 6, 7, 8, 9, 10, 12, and 14, but is silent as to the other items. In addition, we note that Checklist Item 13, regarding reciprocal compensation, is not included in the list on page 2, but none of the ten proposed conditions relates to Item 13. We respectfully request that the Commission state explicitly that upon Verizon NH's agreement to comply with a modified set of conditions, it satisfies all fourteen items in the competitive checklist of Section 271(c).

*Performance Assurance Plan.* In its accompanying deliberative statement, the Commission proposed certain conditions for inclusion in the Performance Assurance Plan (PAP) filed by Verizon NH on July 31, 2001. Verizon NH respectfully suggests that the Commission delete these conditions and adopt the Verizon PAP, as filed, for purposes of evaluating Verizon NH's section 271 application.

First, the Commission proposes to increase the total amount at risk from 36 percent of net return, as filed, to 39 percent. The 36% figure provides an appropriate level of incentive, and was the level approved by the NY PSC and the FCC in connection with Verizon's Section 271 application in New York.<sup>4</sup>

Second, Verizon NH suggests that it is unfair and inappropriate to require Verizon NH to make remedy payments in cash to entities that owe it money. Verizon suggests that once the CLEC remedy payments can be uniquely identified on Verizon's bills (expected in May 2002), then PAP payments be in the form of credits up to the amount of the CLEC's current bill (including any arrearage) and a carryover credit to the next month for any excess. Verizon NH suggests that this procedure, which is consistent with the approach taken in Rhode Island, strikes a reasonable balance between the interests of Verizon NH and of CLECs. Accordingly, Verizon NH requests that the Commission modify its proposed condition to provide:

Until Verizon NH can uniquely identify on wholesale bills a credit attributable to a PAP payment, Verizon NH will make such payments to individual CLECs by check to the extent that the PAP payment exceeds the unpaid portion of the CLEC's current bill (including any arrearage). When Verizon NH can uniquely identify on wholesale bills a credit attributable to a PAP payment, it may make such payments in the form of bill credits up to the amount of the current month's bill (including any arrearage) and by a carryover credit to the next month for any credit exceeding that amount.

Third, the Commission proposes to substitute the MOE threshold tables proposed by the Staff for those filed by Verizon NH (Appendix A to the PAP). Verizon NH strongly disagrees with this proposal. The purpose of the MOE threshold is to ensure that Verizon does not pay

---

<sup>4</sup> Subsequent to FCC's grant of § 271 approval in New York, Verizon New York entered a consent decree with the FCC that provided for additional remedy payments on account a problem involving losses of automatic order notifiers. Those additional penalties raised the amount at risk to 39% of ARMIS net return. The missing notifier problem does not exist in New Hampshire. Therefore, a cap equal to 36% of ARMIS net income is appropriate.

penalties when Verizon is providing parity service. The MOE minimum threshold values in Verizon's PAP were established based on statistical analyses by the New York PSC which are fully documented, have been subjected to scrutiny, and are consistent with the purpose of the plan. As with the minimum thresholds, the maximum levels proposed by Verizon are contained in working PAPs in New York, Massachusetts, and Connecticut, and have withstood the scrutiny of those state commissions and the FCC.

The MOE threshold tables were developed by statisticians on the staff of the New York Public Service Commission (NY PSC) using statistics in a complex mathematical model. The NY PSC established the thresholds consistent with the 95% confidence level around which the entire PAP is built. In addition to the minimum thresholds, the Verizon PAP also contains maximum scores at which it pays out the full amount of the dollars at risk for each of the Modes of Entry. The maximum threshold for each MOE was set in the Verizon PAP by the NY PSC based on competitive harm to the market.

The minimum thresholds in the substitute Appendix A appear to be mathematically erroneous. In addition, the tables set upper limits based on statistical confidence rather than competitive harm. The use of statistics to derive a maximum threshold produces a purely arbitrary result that has no relation to the competitive impact of the performance failure.

The substitute tables constitute a fundamental modification to the PAP that substantially alters the relationship between the PAP's statistical methodologies and the level of resulting payments. This fundamental change to the PAP resulting from substituting the Staff's Appendix A exceeds the range of modifications that Verizon's proposed PAP contemplates.

Under the Staff's substitute Appendix A, to avoid PAP payments, Verizon NH would have to provide significantly better service to CLECs than it does to retail customers — which is not required by the Act. In addition, it will require Verizon NH to shift resources disproportionately to the wholesale market, to the potential detriment of retail customers.

For these reasons, Verizon NH respectfully suggests that the Commission eliminate the three proposed conditions upon its adoption of the PAP for purposes of evaluating Verizon NH's Section 271 application.

Very truly yours,

J. Michael Hickey